

## REMARKS

Applicant respectfully requests consideration of the subject application. This Response is submitted in response to the Office Action mailed April 6, 2009. Claims 34-56 are pending. Claims 34-56 are rejected. In this Amendment, claims 34 and 56 have been amended. No new matter has been added.

### Interview Summary

Applicant conducted an interview with Examiner Chukwurah on May 26, 2010 to discuss proposed claim amendments. The Examiner agreed that these claim amendments overcome the Examiner's previous rejections under 35 U.S.C. §102 and § 103 and a further search may be required.

### 35 U.S.C. §102 Rejections

The Examiner has rejected claims 34-36, 38 and 41-44 under 35 U.S.C. § 102(b) as being anticipated by *Brazell, II*, (U.S Patent No.: 4,759,412, hereinafter "*Brazell*"). Claim 56 was rejected under 35 USC §102(b) as being anticipated by *Kikel* (US Patent 4,848,197).

The present invention is specifically related to an impact hammer in which the movable weight and the tool ends that impact the working surface are part of the same object, i.e. it is a one-piece hammer and tool element that is raised and lowered simultaneously. It is not, and cannot be formed as a two-piece hammer due to the extremely high impact loads imparted by the moving mass.

Moreover, even if a two part construction were possible, there would be no practical, commercial, or operational benefit in turning the tool tip around once worn. As

can be readily seen in the cited prior art (including *Brazell*), only a flat surface is a suitable interface between a heavy moving mass and the driven end of a tool tip/striker pin. Any other configuration would rapidly lead to the damage of one or both faces.

However, a planar flat face is self-evidently unsuited as a tool tip configuration to break rock and other such hardened surfaces. It is therefore of no value to attempt to swap the ends of either the large weight or the tool tip of a two-piece hammer in order to address wear on the tool tip end contacting the impact surface.

*Brazell* discloses a two-piece configuration where the elongated heavy mass (82) does not have

*“.first and second tool ends located at opposing longitudinal ends of the weight, each tool end capable of extending through a lower opening end in the housing to strike an external working surface..”*

Only the tool or ‘chisel’ (22) is capable of extending though the housing (82). It is reiterated that the same distinction between the present invention and the previous citations with two-piece hammer/tool configurations raised by the examiner, (e.g. *lange* (US 6,003,619), *MacOnochie* (US 4,838,363)) still apply to *Brazell*.

In order to more fully emphasize that the present invention relates to a one-piece hammer/tool element, claim 34 has been further amended.

Applicant respectfully submits the amended claim 34 is novel and inventive of the citations and that the object be withdrawn.

Claim 56 has been amended to depend on claim 34.

As claims 35, 36, 38 and 41-44 and 56 depend on independent claim 34, Applicant submits the objections to claims 35, 36, 38 and 41-44 and 56 also be withdrawn.

35 U.S.C. § 103 Rejections

The Examiner has rejected claims 37, 45 and 48-52 under 35 U.S.C. § 103(a) as being unpatentable over *Brazell* in view of *Sicotte*, (U.S Patent No.: 3,205,952, hereinafter “*Sicotte*”).

As reiterated above, applicant respectfully submit the amended claim 34 is novel and inventive of the citations and that the object be withdrawn.

As claims 37, 45 and 48-52 depend on independent claim 34, applicant submit the objections to claims 35, 36, 38 and 41-44 also be withdrawn.

The Examiner has rejected claims 39, 40 and 47 under 35 U.S.C. § 103(a) as being unpatentable over *Brazell* in view of *Robson*, (U.S Patent No.: 5,363,835, hereinafter “*Robson*”). These claims depend from claim 34 and should be allowable for the same reasons as claim 34.

The Examiner has rejected claims 53-55 under 35 U.S.C. § 103(a) as being unpatentable over *Brazell* in view of *Sciotte* as applied to claim 48 and further in view of *Robson*. These claims depend from claim 34 and should be allowable for the same reasons as claim 34.

Applicant, accordingly, respectfully requests withdrawal of all the rejections under 35 U.S.C. § 103.

Applicant respectfully submits that the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call the undersigned attorney at (650) 798-0342.

Please charge any shortages and credit any overages to Deposit Account No. 19-3140. Any necessary extension of time for response not already requested is hereby requested. Please charge any corresponding fee to Deposit Account No. 19-3140.

Respectfully submitted,  
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Date: May 26, 2010

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